Pellegrino, Rachel

From: Hickey, Toni
Sent: Saturday, February 05, 2011 9:43 AM
To: Pellegrino, Rachel
Subject: Fw: "Small Business Study"
Attachments: TM.pdf

Regards,

Toni Y. Hickey
Deputy Chief of Staff
Office of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
(571-272-9300)

----- Original Message -----
From: TMFeedback
To: Brown, Brian (TM); Hickey, Toni
Sent: Sat Feb 05 06:59:00 2011
Subject: FW: "Small Business Study"

From: jefflogic5@gmail.com [jefflogic5@gmail.com] On Behalf Of Jeff Busche [jeffb@iventure.com]
Sent: Saturday, February 05, 2011 12:37 AM
To: TMFeedback
Subject: "Small Business Study"

Dear USPTO

Attached are my comments for your "Request for Comments: Trademark Litigation Tactics"

Thank you for looking into this important issue.

Jeff Busche

Morris, Craig

From: jefflogic5@gmail.com on behalf of Jeff Busche [jeffb@iventure.com]
Sent: Saturday, February 05, 2011 12:38 AM
To: TMFeedback
Subject: "Small Business Study"

Attachments: TM.pdf

TM.pdf (63 KB)

Dear USPTO

Attached are my comments for your "Request for Comments: Trademark Litigation Tactics"

Thank you for looking into this important issue.

Jeff Busche

Jeff Busche
Iventure
16835 Algonquin St #300
Huntington Beach CA 92649

Dear USPTO

My name is Jeff Busche, I am a small business owner and would like to comment on your: **Request for Comments: Trademark Litigation Tactics**

1. Please identify whether you are a trademark owner or practitioner, and the general size and nature of your business or trademark practice, including the number of trademark applications and registrations your business has, or your practice handles. Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner.

I am an entrepreneur that has started multiple companies and have been on the receiving end of trademark bullies' actions.

2. In approximately the last 5 years, please describe any instances of which you have first-hand knowledge where a small business may have been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner.

I have seen many companies and organizations given receive cease-and-desist letters for using generic words such as entrepreneur, stealth and others.

3. Please describe situations where you have been involved in receiving a cease-and-desist letter. Anecdotal information might include, but is not limited to, a description of whether the letter resulted in the small business ceasing its use of one or more marks, or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against the small business owner.

I have received ceased-and–desist letters for using the words: entrepreneur, stealth, pet expo and bridal guide. I have been verbally threatened for using the words bears, logic and others, with the person saying it does not matter what the law says this is "tough justice" and we are tougher than you and we can drag you through court and put you out of business.

4. Please describe situations where you have been involved in trademark litigation in state or federal courts. Anecdotal information might include, but is not limited to, a description of whether the lawsuit settled on the basis of the small business agreeing to cease its use of one or more marks, or on the basis of the plaintiff withdrawing or abandoning its trademark-related allegation(s). Alternatively, relevant information might include whether such lawsuits resulted in a court judgment and the nature of the judgment (such as requiring the small business to cease its use of one or more marks, assessing monetary liability (damages, lost profits, or attorneys' fees) against the small business, requiring the plaintiff to pay the defendant's attorneys' fees, or imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure).

When I was sued, I went to a trademark attorney, I was told I was in the right but it may cost $100,000 or more to defend my rights in court. When I defended myself in federal court the Judge told me regardless of the facts he did not like me there because I had nothing to gain and a lot to lose. That is the position the current trademark law puts small business in and the trademark bullies know it.

I was sued for using the word entrepreneur in federal court: case was dropped because I had outside support to help me defend, but they reserved the right to come after me again. I have not been willing to invest in that venture because of the threat of litigation. I have been sued in federal court for using the phase "bridal guide" I settled after litigation got too costly, I no longer use that phrase or have that business.

5. Please describe situations where you have been involved in opposition/cancellation proceedings instituted at the USPTO against small business owners. Anecdotal information might include, but is not limited to, a description of whether the proceedings settled on the basis of the small business agreeing to abandon its application(s) for one or more marks, or whether the proceedings settled on the basis of the plaintiff withdrawing or abandoning its notice of opposition or cancellation petition. Alternatively, relevant information might include a description of whether such proceedings resulted in a decision by the USPTO Trademark Trial and Appeal Board ("TTAB") refusing to register/canceling one or more marks owned by the small business, or whether such proceedings resulted in the TTAB imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure.

I attempted to prevent the trademarking of the phase Toy Fair because I was using ToyFair.com. The cost of time and money of preventing the trademark was too high so I dropped the opposition and changed my name. Toy Fair is a generic term used all over the world for toy fairs.

6. Do you think trademark "bullies"[1] are currently a problem for trademark owners, and if so, how significant is the problem?

Yes, I know trademark bullies are a significant problem. I and other entrepreneurs I know would like to develop businesses and use generic word domain names that we own, but are hesitant to invest and start these companies because of the threat of costly frivolous litigation. Although there are many cases out there, I feel one that shows the impacted of this is the free use of the word "entrepreneur", that has been clouded by allowing the trademarking of this generic word. At a time that our country needs entrepreneurs the most to build our economy, using the word entrepreneur can cost you dearly. Most users of the word entrepreneur are entrepreneurs that want to help other entrepreneurs, whether it is providing services to help entrepreneurs grow their businesses like PR, finance, sourcing and planning or educating and motivating them. These services are essential to the entrepreneurial health of our country. I have personally seen many of these services shut down just for using the word entrepreneur. Including magazines to help women, minorities, kids and others start businesses, PR companies that help businesses grow, newsletters put out by colleges to encourage entrepreneurship and others, including websites I want to develop.

Many bullies use trademark litigation to take generic domain names form small companies. This is called "Reverse Domain Hijacking"

7. Do you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the law?

Yes, but not limited to this area, frivolous patent lawsuits are also killing many entrepreneurs from innovation.

8. Do you think the USPTO has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should the USPTO do?

Yes, absolutely! For trademarks the USPTO should have a process where small businesses can complain about a trademark bully and the USPTO opens an investigation into the abuse and whether the mark should have been granted in the first place. In this process the USPTO needs to be the plaintiff and take input from the victims of the bullying. This way the proceeding does not stop when the bully threatens or actually